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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JAMES M. IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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AZ CORP COMMISSION
DOCUMENT CONTROL

ARIZONA CORPORATION COMMISSION,)	DOCKET NO.
)	
Complainant,)	0425
)	G-01551A-02-0257
)	
vs.)	
)	
SOUTHWEST GAS CORP.,)	
)	
Respondent)	

NOTICE OF FILING

Pursuant to the Procedural Order dated August 12, 2002, the ARIZONA UTILITY INVESTORS ASSOCIATION, INC. hereby provides notice of filing the rejoinder testimony of Walter W. Meek in the above-captioned proceeding.

Respectfully submitted, this 20th day of December, 2002.

Walter W. Meek, President

CERTIFICATE OF SERVICE

An original and ten copies
of the referenced testimony
were filed this 20th day of
December, 2002, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Copies of the referenced testimony
were delivered this 20th day of
December, 2002, to:

Arizona Corporation Commission
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William Mundell, Chairman
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Jim Irvin, Commissioner
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Marc Spitzer, Commissioner
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A copy of the referenced testimony
was mailed or faxed this 20th day of
December, 2002, to:

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Walter W. Meek

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DIRECT TESTIMONY

OF

WALTER W. MEEK

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Walter W. Meek. My business address is 2100 North Central Avenue, Suite 210, Phoenix, Arizona 85004.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am the president of the Arizona Utility Investors Association ("AUIA" or "Association"), a non-profit organization formed to represent the interests of shareholders and bondholders who are invested in utility companies that are based in or do business in the state of Arizona.

Q. ARE SOME AUIA MEMBERS SHAREHOLDERS OF SOUTHWEST GAS CORPORATION?

A. Yes. AUIA has approximately 6,000 members, including a number of common shareholders of Southwest Gas Corporation ("SWG or Southwest").

Q. WHAT IS YOUR BACKGROUND IN REPRESENTING SHAREHOLDER CONCERNS AND INTERESTS?

A. I have been president of AUIA for more than eight years. Prior to that, my consulting firm managed the affairs of the Pinnacle West Shareholders Association for 13 years. During this time we have represented shareholders in numerous rate cases and other regulatory matters and have published many position papers, newsletters and other documents in support of shareholder interests.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I am here to represent the views of the equity owners of Southwest Gas Corporation regarding the complaint and order to show cause issued to Southwest Gas by the Commission on June 26, 2002.

1
2 Q HAS AUIA FORMED A POSITION ON SOME OR ALL OF THE 22 COUNTS
3 RECITED IN THE COMPLAINT?

4 A. Not at this time. We are still evaluating the pre-filed testimony and exhibits
5 in an attempt to grasp the details and the sequence of events that occurred
6 in shutting off the gas leak near 16th Street and Palm Lane on Jan. 29, 2002.
7

8 Q. HAS AUIA FORMED AN OVERALL OPINION ABOUT THE EVENT AND
9 THE RESULTING COMPLAINT?

10 A. I think we know enough to believe that the Office of Pipeline Safety (OPS)
11 has over-reacted to the circumstances of the Palm Lane event and they are
12 over-reaching the Commission's authority in the remedies they're seeking.
13 Just as troubling is the clear evidence that a dysfunctional relationship now
14 exists between OPS and the state's largest gas provider.
15

16 Q. WHY DO YOU BELIEVE THAT OPS OVER-REACTED?

17 A. A simple summary of the event looks like this:

- 18 • This was a very complicated leak situation in an old part of the city, with
19 substantial gas migration before the leak was even reported.
- 20 • Southwest Gas provided a massive response, with some 235 employees,
21 aided by the Phoenix Fire Department.
- 22 • A large area was successfully evacuated and sealed off.
- 23 • The shutdown took too long by the company's own admission, but
24 mainly because a mistake was made in closing a valve.
- 25 • Nevertheless, the leak was contained.
- 26 • No ignition took place.
- 27 • No injuries occurred.
- 28 • No property was damaged.
29

30 Q. THEN, WHAT IS THE BASIS OF THE COMPLAINT?

31 A. OPS apparently concluded that Southwest's response was so deficient that
32 there was excessive danger to the public. Either that, or the complaint
33 represents a slavish, bureaucratic dedication to rules for their own sake.

1 In any case, no horror stories came from this event other than those
2 generated by OPS.
3

4 Q. WHAT IS THE NATURE OF THE OVER-REACTION?

5 A. I will discuss shortly our concerns with the specific relief OPS is seeking in
6 this proceeding, but I can summarize by saying the complaint is punitive,
7 excessive and potentially life-threatening to the company. We can only
8 wonder what OPS would be demanding if, God forbid, an ignition had
9 taken place and something or someone had been incinerated.
10

11 Q. WHAT ARE YOUR CONCERNS ABOUT THE RELIEF STAFF IS SEEKING?

12 A. There are 10 separate paragraphs under the heading "RELIEF
13 REQUESTED" and AUIA is concerned with six of them. In general, our
14 concerns are that they are extreme, they have not really been thought
15 through by OPS and some of them should be handled, if at all, in a
16 rulemaking proceeding rather than a show cause hearing.
17

18 Q. SHALL WE DISCUSS THE SIX ITEMS ONE AT A TIME?

19 A Yes. I'll discuss them in their relative order of importance, not the order in
20 which they appear.
21

22 Q. BEGINNING WITH THE TWO-HOUR RULE?

23 A. Yes. The first item is OPS' request in Paragraph 5 for an order requiring
24 SWG to stop the flow of gas within two hours from the time it receives
25 notification of a leak or potential leak. According to the testimony of Anita
26 Romero, this requirement is unprecedented in the United States and could
27 only be accomplished at a horrendous cost to the company. Whether her
28 estimates are precisely accurate or not, this proposed relief is disturbing in
29 two respects:

30 First, it is apparent that the Staff performed little or no analysis of the
31 consequences of this proposed rule. It should be deeply troubling to the
32 Commission that OPS, while lodging the most serious charges of
33 misfeasance against Southwest Gas, would advance a requirement this
34 severe without understanding its costs or benefits.

1 Second, this proposed remedy is the quintessential example of an issue that
2 should be dealt with in rulemaking rather than in a punitive proceeding. It
3 is a complicated technical matter, undoubtedly susceptible to conflicting
4 cost-benefit claims, and it would ultimately affect other gas operators who
5 are not parties to this complaint.
6

7 Q. ARE THE PROPOSED QUARTERLY REPORTS NEXT ON YOUR LIST?

8 A. Yes, but only because they prompt another rulemaking issue. In Paragraph
9 6, the Staff asks the Commission to order SWG to submit quarterly reports
10 to OPS that document, under oath, the quarterly training and other
11 measures taken by the company "to ensure appropriate personnel have
12 been effectively trained in all the Company's emergency procedures."
13 Here again is a so-called remedy that should apply to all gas operators
14 under ACC jurisdiction and which should be subject to the give-and-take
15 and evidentiary test that can only be accomplished in rulemaking.
16

17 Q. IS AUIA CONCERNED ABOUT THE PROPOSED BAN ON RATEPAYER
18 RECOVERY?

19 A. Absolutely. In Paragraph 8, Staff requests that the Commission bar SWG
20 from recovering from ratepayers "in any future rate proceedings: (a) any
21 cost related to implementation of any part of this order, or (b) any penalties
22 assessed in this matter."

23 As I will discuss later, assuming that "penalties" are synonymous with fines,
24 AUIA has no quarrel with giving up their recovery from ratepayers.

25 However, the rest of this proposal would ban recovery of the expenses
26 imposed by Paragraphs 5 and 6. The idea that this Commission could order
27 a public service corporation to expend millions of dollars on system
28 upgrades (which, as a matter of law, is illegal to begin with) and foreclose
29 the possibility of recovery through rates is preposterous and oppressive. It
30 would amount to a coercive taking of shareholder assets and could destroy
31 the company's financial integrity.
32

33 Q. WHAT IS AUIA'S VIEW OF THE THREAT TO SWG'S CC&N?

1 A. This is the coup de grace, a clear sign of regulation gone amuck. Paragraph
2 10 seeks permission for OPS to commence action to revoke SWG's CC&N if
3 the company "fails to timely comply with any requirement of a
4 Commission Decision in this matter..." (Emphasis supplied). And then
5 what? Sell the meters one at a time? Put an ad in the classifieds, i.e., gas co.
6 for sale, sharp, one owner? Call OneOK?
7 Simply including a provision like this in a Commission order would
8 damage SWG's credit and result in extra costs to ratepayers. The
9 suggestion that an unspecified compliance item could trigger a proceeding
10 to shut down a company with nearly 500,000 customers is bizarre. The
11 thought process borders on being juvenile and it demonstrates an extremist
12 regulatory philosophy within OPS that lacks any sense of scale or an ability
13 to balance what is in the public interest.
14

15 Q. DOES AUIA AGREE WITH STAFF'S APPROACH TO FINES?

16 A. Not entirely. Fines are covered in Paragraphs 2 and 3. AUIA recognizes
17 that the Commission has the authority to levy fines against public service
18 corporations and fines for misbehavior cannot be recovered from
19 ratepayers. However, fines should match the offense and the respondent
20 should have reasonable notice of its potential liability.

21 In Paragraph 2, Staff requests maximum fines of \$10,000 per day for each
22 violation of federal regulations, with a maximum of \$500,000 for any
23 related series of violations. In Paragraph 3, Staff requests a maximum fine
24 of \$5,000 for each violation of a Commission order, decision, rule or
25 regulation.

26 There are two problems with these proposed fines.

27 First, although fines up to \$10,000 per day are permitted in A.R.S. 40-442,
28 they far exceed the limits prescribed in Article XV of the Arizona
29 Constitution and AUIA believes the Commission's authority to levy fines is
30 limited by that section of the Constitution.

31 Second, it is difficult to know what the potential liability may be. OPS has
32 constructed this case in such a way that it is impossible to calculate how
33 many violations they are alleging. For example, nine of the 22 counts are
34 purported violations of Commission orders issued in 1994 and 1998. In its

1 complaint, OPS suggests that Southwest Gas has been out of compliance
2 with those orders for months or years and, therefore, may have committed
3 daily violations by the hundreds. If that is OPS's interpretation, the
4 potential liability to Southwest could be astronomical.
5

6 Q. DOES THAT COVER AUIA'S CONCERNS ABOUT REMEDIES?

7 A. Yes.
8

9 Q. EARLIER, DID YOU SAY THIS PROCEEDING DISCLOSED A
10 DYSFUNCTIONAL RELATIONSHIP BETWEEN SWG AND OPS?

11 A. Yes. It is clear that the relationship between these organizations is heading
12 toward polar extremes. Southwest Gas feels that the Office of Pipeline
13 Safety has become overbearing, dictatorial and irrational in its regulatory
14 practices. On the other hand, OPS in this complaint accused SWG of
15 unprofessional conduct and negligence and fostered an impression that the
16 company just doesn't care about safety.
17

18 Q. WHO IS TO BLAME?

19 A. We don't think it's relevant to pick sides or assign blame. These two
20 organizations have to work together toward common goals. Proceedings
21 like this one are not the way to get that done. In this proceeding the Staff is
22 on the offense and Southwest Gas is on the defense. The Commission has
23 to act as a judge. But the real job here is not to dispense justice or
24 retribution from on high, but to manage the problem.
25 Having said that, it's hard not to back Southwest Gas, based on the big
26 picture. They have a rapidly growing system in Arizona, which is
27 inherently harder to manage from every point of view, including safety.
28 Yet, their pipeline location record is excellent and they are reducing third-
29 party damage to their system. They are also lowering their average
30 incident response times and their average gas shut-off times. You can't do
31 those things if you have put safety programs on the back burner or if your
32 personnel don't know what they're doing
33

1 Any suggestion that Southwest Gas doesn't work at safety is mind-
2 boggling, for one simple reason. If you run a gas distribution company and
3 you don't do it safely; if you blow up buildings and people, you won't have
4 a business for very long and you won't be able to sell it for very much.
5 There is no payoff to scrimping on safety and there is no evidence in this
6 case that Southwest Gas has done that.

7
8 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

9 A. Only this. Safety is a built-in imperative in the gas business. By the same
10 token, safety regulation is a societal imperative and if it is applied with an
11 even hand, it can contribute to a successful result. A zero tolerance for
12 mistakes will not produce a zero incident result. The Commission needs to
13 direct these organizations toward the appropriate balance and a good
14 beginning would be to avoid the extreme penalties sought in this
15 complaint.

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17 Q. IS THAT THE END OF YOUR TESTIMONY?

18 A. Yes, it is.
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